

# RULEMAKING NOTICE FORM

Env-Wt 303, 304, 501, 506, 801, 803, 804 -  
various sections and paragraphs

Notice Number

Rule Number	various sections and paragraphs
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1. Agency Name & Address:  Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority:	RSA 482-A:11
	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	
	Amendment	<b>X</b>
	Repeal	
	Readoption	
	Readoption w/amendment	<b>X</b>

5. Short Title: Amendments relative to Stream Crossings

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

The existing wetlands rules, Env-Wt 100-800, contain various provisions relative to stream crossings that are general and not compiled in a way that makes them easily accessible. The proposed amendments and new rules would strengthen -- and make more specific -- the criteria for design and approval of stream crossings. The proposed rules result from the stakeholders workgroup created to address stream crossing issues. Through a related rulemaking, the Department proposes to adopt Chapter Env-Wt 900 to complement the changes proposed in this rulemaking. The specific changes proposed in this rulemaking are explained below:

The introductory language of Env-Wt 303.02 is being amended grammatically, and new paragraph (p) is being added to cross-reference new tier 3 major projects (ref. Env-Wt 904.04).

The introductory language of Env-Wt 303.03 is being amended grammatically, new paragraph (n) is being added to account for projects in public rights-of-way that include new stream crossings, and new paragraph (o) is being added to cross-reference new tier 2 minor projects (ref. Env-Wt 904.03).

The introductory language of Env-Wt 303.04 is being amended to clarify that projects meeting the criteria of Env-Wt 303.02 or Env-Wt 303.03 are excluded; paragraphs (g), (i), (j), (n), (x)-(z), and (ae) are being amended generally for clarity and to reduce the criterion relative to stream channel width for minimum impact projects from 10 feet to 5 feet; paragraph (h) is being amended to replace language re: minimum impact bridge projects with a cross-reference to new tier one major projects (ref. Env-Wt 904.02); and paragraph (ag) is being added to create expedited process for replacement stream crossings that access single-family residences/ building lots or property for noncommercial recreational uses if the contributing watershed is 20 acres or less.

The introductory language of Env-Wt 303.05 is being amended for clarity, the introductory language of paragraph (a) is being amended to exclude stream crossings, and paragraph (f) is being amended for clarity.

Env-Wt 304.07 is being amended for clarity.

Env-Wt 501.02 relative to application requirements is being amended to add a new paragraph (c) to cross-reference additional application requirements for stream crossings that are specified in (new) Env-Wt 900. The permit by notification (PBN) established by Env-Wt 506.01(a)(8) for stream crossings for single-family residences and noncommercial recreational uses is being amended to exclude new stream crossings, to use the same terminology as is used in new Env-Wt 900, and to specify a maximum contributing watershed of 20 acres. In the same section, new paragraph (c) is being added to explicitly exclude subdivisions from the permit-by-notification process.

Env-Wt 506.04(c) is being amended to specify a maximum contributing watershed of 20 acres.

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Env-Wt 801.01, Env-Wt 801.03, Env-Wt 803.01, Env-Wt 803.03, Env-Wt 803.05, and Env-Wt 804.02 relative to compensatory mitigation are being amended to distinguish between stream crossing projects and other kinds of projects. Env-Wt 801.03 also is being amended to reflect pending legislation relative to expanding the eligibility for paying a fee in lieu of permittee-responsible mitigation.

The proposed rules benefit the regulated community by making the state and federal process consistent. The proposed rules benefit the environment by requiring stream crossings to allow for passage and to accommodate for flooding events. This will help fish and amphibians as well as water flow and sedimentation. The proposed rules benefit the public by ensuring that crossings can handle stream flows for 25-year or 100-year floods (depending on the size of the watershed, *etc.*) which should mitigate some flooding events. These rules adopt recommendations made by the Legislative Flood Study Commission by establishing criteria relating to flood events and requiring mitigation for impacts in 100 year flood plains. Additionally, with the anticipated passage of legislation (SB 65) to establish an In Lieu Fee Stream Mitigation Fund, these rules will provide the threshold and framework for future work on this issue.

6. (b) Brief description of the groups affected:

Any individual or entity, including state agencies, political subdivisions, and private developers, that needs or wishes to construct or maintain a stream crossing may be affected by the proposed rules.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	Statute(s) Implemented
Env-Wt 303.02 intro & new (p); Env-Wt 303.03 intro, new (n) & (o); Env-Wt 303.04 intro, (g)-(j), (n), (x), (y), (z), (ae) & new (ag); Env-Wt 303.05 intro, (a) intro & (f); Env-Wt 304.07	RSA 482-A:1 & 3; RSA 482-A:11
Env-Wt 501.02 new (e); Env-Wt 506.01(a)(8) & (c); Env-Wt 506.04(c)	RSA 482-A:1 & 3; RSA 482-A:11
Env-Wt 801.01; Env-Wt 801.03; Env-Wt 803.01(a) intro, new (b), & (c) intro; Env-Wt 803.03; Env-Wt 803.05; Env-Wt 804.02	RSA 482-A:3, I; RSA 482-A:11; RSA 482-A:28-33

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Wetlands Rule Coordinator
Address:	Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #:	271-7514
		Fax#:	271-6588
		E-mail:	<a href="mailto:karla.mcmanus@des.nh.gov">karla.mcmanus@des.nh.gov</a>

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, September 18, 2009**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearings scheduled for:

Date and Time: **Tuesday, September 1, 2009, 10:30 a.m. to 12:30 p.m.**

Place: **Rooms 112, 113 & 114, DES Offices, 29 Hazen Drive, Concord, NH**

Date and Time: **Thursday, September 3, 2009, 6:00 p.m. to 8:00 p.m.**

Place: **Littleton Community House, 120 Main Street, Littleton, NH**

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Date and Time: **Tuesday, September 8, 2009, 6:00 p.m. to 8:00 p.m.**

Place: **Keene Public Library, Ruth Huntress Auditorium, 60 Winter Street, Keene, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 09:113 , dated 07/15/09

See Attached.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules do not create, modify, or expand any program in such a way as to require action by political subdivisions and so do not require any expenditures by political subdivisions. The rules thus do not violate Part I, Article 28-a of the N.H. Constitution.